

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

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**In the Matter of**

**CFTC Docket No:** 05-3

**Credit Lyonnais Rouse Limited,**  
**Respondent**

**ORDER INSTITUTING  
PROCEEDINGS PURSUANT TO  
SECTIONS 6(c) AND 6(d) OF THE  
COMMODITY EXCHANGE ACT,  
MAKING FINDINGS AND IMPOSING  
REMEDIAL SANCTIONS**

**I.**

The Commodity Futures Trading Commission ("Commission") has reason to believe that Credit Lyonnais Rouse Limited ("CLR") has violated Section 4c(a) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6c(a) (2002), and Section 1.38(a) of the Commission's Regulations, 17 C.F.R. § 1.38(a) (2004). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether CLR engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

**II.**

In anticipation of the institution of this administrative proceeding, CLR has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. CLR acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Act, Making Findings and Imposing Remedial Sanctions ("Order"). CLR, without admitting or denying the findings of fact or conclusions of law herein, consents to the use of the findings contained in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.<sup>1</sup>

<sup>1</sup> CLR does not consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, as the sole basis for any other proceeding brought by the Commission other than a proceeding in bankruptcy, or to enforce the terms of the Order. Nor does CLR consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any other party in any other proceeding. The findings made in this Order are not binding on any other person or entity named as a defendant or respondent in this or any other proceeding.

### III.

The Commission finds the following:

#### A. SUMMARY

On April 1 and 16, 2002, employees of CLR participated with two foreign traders to prearrange two separate cocoa spread cross trades that were respectively entered into and executed on the Coffee, Sugar & Cocoa Exchange ("CSCE"), a subsidiary of the New York Board of Trade. On both occasions, prior to the orders being entered into and executed on the CSCE, employees of CLR had pre-trade telephone discussions with employees of the two foreign traders regarding the specific price and quantity of the trades that were to be executed later in the day.

The knowing participation in the prearrangement of the buy and sell spread orders by employees of CLR ensured that the orders would meet on the trading floor at the specific price and quantity as had been agreed upon prior to the execution of the trades. The prearranged trades that employees of CLR caused to be entered into and crossed negated market risk and price competition and constituted fictitious sales in violation of Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (2002). Further, by knowingly participating with the two foreign traders' entry of illegitimate, prearranged orders to buy and sell cocoa spreads, CLR's employees also engaged in noncompetitive transactions in violation of Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2004). Because CLR's employees undertook their actions within the scope of their employment with CLR, CLR is liable for the violations of Section 4c(a) of the Act, 7 U.S.C. § 6c(a) and Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002).

#### B. RESPONDENT

Credit Lyonnais Rouse Limited is a limited liability company organized under the laws of England and Wales and is regulated by the Financial Services Authority ("FSA") of the United Kingdom. CLR's business address is 5 Broadwal House, 5 Appold Street, London EC2A 2DA, England.

#### C. FACTS

##### April 1, 2002

On April 1, 2002 at approximately 9:48 A.M., employees of CLR participated in the first of approximately 11 pre-trade telephone conversations pertaining to CLR's plans with two foreign traders to prearrange orders for the buying of 512 lots of the May/July cocoa spread that was to be submitted and executed later that day on the CSCE. In some of the conversations, the participants also discussed specific prices sought for the trade.

As a result of the conversations described above, at 10:53A.M., a CLR employee simultaneously placed buy and sell orders to be crossed for the two foreign traders with the

executing floor broker's clerk at the CSCE for 512 May/July 2002 cocoa spreads. At 10:54 A.M., a floor broker entered into and crossed a prearranged cocoa trade on the CSCE wherein the two foreign traders sold and bought 512 May/July 2002 cocoa contracts at 13.<sup>2</sup>

#### **April 16, 2002**

On April 16, 2002 at approximately 8:31 A.M., CLR employees participated in the first of approximately 15 pre-trade telephone conversations pertaining to CLR's plans with the two foreign traders to prearrange orders for the buying of 750 lots of the May/July cocoa spread that was to be submitted and executed later that day on the CSCE. In some of the conversations, the participants also discussed specific prices sought for the trade.

As a result of the conversations described above, at 11:19 A.M. a CLR employee simultaneously placed buy and sell orders to be crossed for the foreign traders with the executing floor broker's clerk at the CSCE for 750 May/July 2002 cocoa spreads. At 11:21 A.M., a floor broker entered into and crossed a prearranged cocoa trade on the CSCE wherein the two foreign traders sold and bought 750 May/July cocoa contracts at a price of 34.<sup>3</sup>

#### **D. LEGAL DISCUSSION**

##### **1. CLR Knowingly Participated in the Entry of Fictitious Sales in Violation of Section 4c(a) of the Act**

Section 4c(a) of the Act makes it unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction that is a fictitious sale. *In re Gimbel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,213 at 35,003 (CFTC Apr. 14, 1988), *aff'd as to liability*, 872 F.2d 196 (7<sup>th</sup> Cir. 1989). "By enacting Section 4c(a), Congress sought to ensure that all trades are focused in the centralized marketplace to participate in the competitive determination of the price of the futures contracts." *In re Thomas Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,742 (CFTC Dec. 10, 1997), *quoting S. Rep. No. 93-1131, 93d Cong., 2d Sess. 16-17 (1974)*; *see also Merrill Lynch Futures, Inc. v. Kelly*, 585 F. Supp. 1245, 1251 n.3 (S.D.N.Y. 1984) (Section 4c(a)(A) was generally intended to prevent collusive trades conducted away from the pits). As a result, Section 4c broadly prohibits artificial trades intended to avoid the risks and price competition of the open market.

This broad language, together with the other prohibitions in Section 4c, "evinces an intention to outlaw insofar as possible all schemes of trading that are artificial and not the result of arms-length trading on the basis of supply and demand factors and trading opinion of those factors." *Goldwurm*, 7 Agric. Dec. at 276. *See also Sundheimer v. CFTC*, 688 F.2d 150, 152

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<sup>2</sup> The May 2002 prices for the spread transactions are stated in terms of the difference in price between the futures contracts. In this case, the May leg of the spread was 1487 and the July leg was 1500. Therefore, the difference is 13.

<sup>3</sup> The May 2002 prices for the spread transactions are stated in terms of the difference in price between the futures contracts. In this case, the May leg of the spread was 1520 and the July leg was 1486. Therefore, the difference is 34.

(2d Cir. 1982), cert. denied, 460 U.S. 1022 (1983) (the absence of good-faith, arms length trading and the prearrangement for losses and gains are hallmarks of fictitious sales).

Although Section 4c(a) of the Act prohibits “fictitious sales,” the term is not defined in the Act. *Thomas Collins*, ¶ 27,194 at 45,742; *In re Harold Collins*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,982 at 31,903 (CFTC Apr. 4, 1986); *modified* [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,401 (CFTC Nov. 26, 1986), *rev’d on other grounds sub nom. Stoller v. CFTC*, 834 F.2d 262 (2<sup>nd</sup> Cir. 1987). A fictitious sale is a general category which includes, at a minimum, the unlawful practices specifically enumerated in Section 4c(a) as well as prearranged trading. *Id.*; *In re Gimbel*, ¶ 24,213 at 35,003.<sup>4</sup> The central characteristic of the general category of fictitious sales is the use of trading techniques that give the appearance of submitting trades to the open market while negating the risk or price competition incident to such a market. *In re Fisher*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,725 at 56,052 n.11 (CFTC Mar. 24, 2004); *Thomas Collins*, ¶ 27,194 at 45,742; *Harold Collins*, ¶ 22,982 at 31,902.

The Commission has long held that prearranged trading is a form of fictitious sales. *Harold Collins*, ¶ 22,982 at 31,903. “By determining trade information such as price and quantity outside the pit, then using the market mechanism to shield the private nature of the bargain from public scrutiny, both price competition and market risk are eliminated.” *Id.*

In order to establish that respondent engaged in fictitious sales, it must be demonstrated that respondent possessed the intent to avoid a *bona fide* market transaction. *Harold Collins*, ¶ 22,982 at 31,903 (to establish a violation of Section 4c by engaging in fictitious trades, the Division must show an “intent to create the appearance of genuine purchase and sales while avoiding any bona fide market transaction”).

In this case, the various pre-trade telephone conversations between the employees of CLR and the employees of the two foreign traders pertaining to the specific price and quantity of the trades prior to the submission of the orders and the execution of the trades establish that the trades were illegitimately prearranged and thus, were fictitious sales. Consequently, by knowingly participating in the entry and execution of two prearranged trades, the employees of CLR violated Section 4c(a)(1), which makes it unlawful to offer to enter into, or to enter into, any commodity futures transaction that is a fictitious sale. Moreover, pursuant to Section 2(a)(1)(B) of the Act, CLR is liable for these violations.

### **3. CLR Knowingly Participated in the Execution of Noncompetitive Trades in Violation of Commission Regulation 1.38(a)**

Commission Regulation 1.38(a) requires that all purchases and sales of commodity futures be executed “openly and competitively.” The purpose of this requirement is to ensure

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<sup>4</sup> Although the Commission has previously held that a trade submitted to the pit cannot be a fictitious trade, *see In re Sundheimer*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,245 at 25,219 n.9, *aff’d on other grounds*, 688 F.2d 150 (2d Cir. 1982) (pre-arranged “real trades” conducted in the pit, which bring about an actual change in the market position between two parties, do not constitute “fictitious trades”), the Commission has abandoned that position. *See Harold Collins*, 22,982 at 31,902-3.

that all trades are executed at competitive prices and that all trades are directed into a centralized marketplace to participate in the competitive determination of the price of futures contracts. Prearranged trading is a form of non competitive trading that violates 17 C.F.R. § 1.38 *Gimbel*, ¶24,213 at 35,003.

Non-competitive trades are generally transacted in accordance with expressed or implied agreements or understandings between and among the traders. *In re Gilchrist*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993 at 37,652 (Jan. 25, 1991) (intentional arrangement of series of transactions in gold pit). Trades can be noncompetitive even though they were executed in the pit. *In re Buckwalter*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,683 (CFTC Jan. 25, 1991) (knowing participation in web of pit transactions that achieved desired tax consequences) (citing *Laiken v. Dep't of Agriculture*, 345 F.2d 784, 785 (2d Cir. 1965)).

By knowingly participating in the entry and crossing of two illegitimately prearranged noncompetitive purchases and sales on the CSCE, employees of CLR violated Commission Regulation 1.38(a). Accordingly, pursuant to Section 2(a)(1)(B) of the Act, CLR is liable for these violations.

#### IV.

#### **OFFER OF SETTLEMENT**

CLR has submitted an Offer in which it, without admitting or denying the findings herein: (1) acknowledges service of the Complaint and the Order; (2) admits the jurisdiction of the Commission with respect to the matters set forth herein; (3) waives a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff's participation in the Commission's consideration of the Offer, all claims which it possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2004), relating to, or arising from this action, and any claim of Double Jeopardy based upon institution of this proceeding or the entry of any order imposing a civil monetary penalty or any other relief; (4) stipulates that the record basis on which the Order may be entered shall consist solely of the Complaint, Order and findings in the Order consented to in the Offer; and (5) consents to the Commission's issuance of the Order, which makes findings as set forth below and: (a) orders CLR to cease and desist from violating the provisions of the Act and Regulations that they have been found to have violated; (b) imposes a civil monetary penalty upon CLR of eighty-five thousand dollars (\$85,000); and (c) orders CLR to comply with the undertaking consented to in its Offer.

#### V.

#### **FINDINGS OF VIOLATIONS**

Solely on the basis of the consent evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that CLR violated Section 4c(a) of the Commodity Exchange

Act, as amended (the "Act"), 7 U.S.C. § 6c(a), and Section 1.38(a) of the Commission's Regulations, 17 C.F.R. § 1.38(a).

## VI.

### ORDER

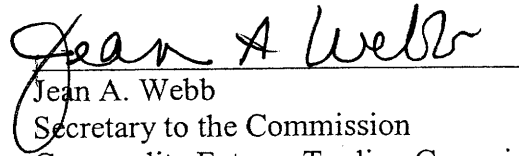
Accordingly, it is hereby ordered that:

1. CLR cease and desist from violating Section 4c(a) of the Act and Section 1.38(a) of the Regulations;
2. CLR pay a civil monetary penalty in the amount of eighty-five thousand dollars (\$85,000) due within ten (10) days of the date of the Order; payment is to be made by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies CLR as the payee and the name and docket of this proceeding. CLR shall simultaneously transmit a copy of the cover letter and the form of payment to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if CLR fails to pay the full amount within fifteen (15) days of the due date, it shall be automatically prohibited from the privileges of all registered entities until it shows to the satisfaction of the Commission that payment of the full amount with interest thereon to the date of payment has been made;
3. CLR acknowledges that failure to comply with the Order shall constitute a violation of the Order and may subject it to administrative or injunctive proceedings, pursuant to the Act; and
4. CLR is directed to comply with the following undertaking:

neither CLR nor any of its agents or employees under its authority and control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order, or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision affects its: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. CLR shall take all steps necessary to ensure that its respective agents or employees, if any, understand and comply with this undertaking.

The provisions of this Order shall be effective on this date.

By the Commission

  
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Jean A. Webb  
Secretary to the Commission  
Commodity Futures Trading Commission

Dated: August 24, 2005